IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA
and
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

W.P.NO.3266 OF 2002

V.Thangavelu ..Petitioner

-Vs-

1.State of Tamil Nadu rep. by the
Secretary to Government
Environment & Forest Department
Secretariat,
Chennai 9

2.The Principal Chief Conservator of Forests
Chennai 600 006

3.The District Forest Officer
Vellore
North Arcot District

4.The Registrar
Tamil Nadu Administrative Tribunal
Chennai 600 104 ..Respondents

Petition filed under Article 226 of the Constitution of India for the issue of writ of Certiorarified Mandamus to call for the records of the Fourth respondent herein namely the punishment of compulsory retirement of the petitioner made in O.A.No.8193/97 dated 4.9.2001 and quash the same as null and void, illegal, invalid and consequently direct the first respondent to reinstate the petitioner herein in service with all service and monetary benefits.

For petitioner : Mr.Shahul Hameed
For respondents : Ms.Selvi George for Mr.V.S.Sethuraman,
Spl.G.P.(F)
- - -
:ORDER

(The order of the Court was made by P.K.MISRA,J.)

Heard the learned counsels appearing for the parties.
The present writ petition has been filed against the order passed by the Tamil Nadu Administrative Tribunal in O.A.No.8193 of 1997 dated 4.9.2001.

2. The facts giving rise to the present writ petition are as follows :-
The petitioner entered service in the Forest Department in the year 1981 as Forest Guard. Subsequently, by G.O.Ms.No.1036 dated 16.10.19 85, the petitioner and several other employees in the Range Office, Santhavasal were placed under suspension in contemplation of departmental enquiry. At that stage, the petitioner filed W.P.No.13474 of 198 5, wherein the High Court directed the higher officials to complete the enquiry before 30.6.1986. Subsequently, however, the petitioner was reinstated in service. Thereafter, the Government referred the matter for enquiry by the Tribunal for disciplinary proceedings. Charges were framed against the Range Officers, Foresters, Forest Guards including the petitioner. So far as the petitioner is concerned, the relevant disciplinary proceedings was numbered as D.E.No.225 of 1985, wherein 13 persons including S.Paramanandam, Forest Range Officer and the present petitioner, were the delinquent employees. The substance of the charge was to the effect that the Forest Ranger had collected a sum of Rs.1,200/- from one Kannan as if the same was fine for the commission of Forest Offence and thereafter, the said Ranger had remitted a sum of Rs.250/- and appropriated the balance of Rs.950/- for himself. It was further alleged that other delinquents, namely 2 to 13 , have aided and abetted the said Forest Ranger. The substance of the allegation was to the effect that 12 persons were travelling in a bus towards Ranipet with their bamboo baskets and pans to sell them in Ranipet Market and at that time, the delinquent officers 2 to 13, came in a Forest Department lorry and stopped the bus and took the aforesaid 12 persons in the departmental lorry along with their bamboo baskets and pans to Santhavasal Forest Range Office. En-route, the delinquent No.2, who was the Forester of Polur Section, dropped one lady Smt.Rajammal and asked her to inform the relatives of the remaining 11 persons to come to Santhavasal Forest Range Office with Rs.2,00 0/-. On 19.2.1982, the delinquent No.2 produced the said 11 persons before the delinquent officer No.1, namely the Forest Ranger and the delinquent No.1 demanded an illegal gratification of Rs.300/- each from those persons for releasing them. On the very same date, one Mr. Kannan met delinquent No.1 along with some other private persons at Santhavasal Forest Range Office and requested the delinquent No.1 to release 11 persons, who had been detained. The delinquent No.1 had demanded illegal gratification of Rs.2,500/- for releasing the said persons and after some bargaining, delinquent No.1 had agreed to receive Rs.1,200/- for releasing those persons and the said sum was paid by Mr.Kannan in the presence of delinquent Nos.2 and 3, namely T.Kannan, Forester, Polur Section and one C.Palani, Forest Guard, Santhavasal beat. Thereafter, those persons were released along with their articles after obtaining their signatures in some papers. The further allegation is that delinquent No.1, in collusion with delinquent Nos. 2 to 13 , had created records and foisted cases against the persons. Out of the amount collected, a sum of Rs.250/- was deposited as compounding fee and the balance amount was kept by the delinquent No.1.

3. The disciplinary Tribunal, on a consideration of the materials on record, came to the conclusion that the allegation of illegal gratification demanded by the Forest Range Officer and the subsequent payment, had been proved. It also found that the other delinquents had aided and abetted the commission of the aforesaid delinquency by the Forest Range Officer.

4. The enquiry report was sent to the Principal Chief Conservator of Forests, who however opined that the findings were not acceptable. However, at that stage, the State Government sought for the opinion of Tamil Nadu Public Service Commission, which initially was of the opinion that charges have not been proved, but subsequently opined that the charges had been proved, but award of extreme punishment of dismissal may not be proper and suggested for stoppage of increment for 3 years with cumulative effect.

5. The Government, on a consideration of various materials on record, came to the conclusion that charges had been proved and by G.O.(3 D) No.69 dated 20.8.1997, imposed the punishment of removal from service in respect of all the delinquents, including the Forest Range Officer. Such order of the Government was challenged by several employees in separate Original Applications before the Tamil Nadu Administrative Tribunal.

6. The present petitioner had filed O.A.No.8193 of 1997. Six original applications were disposed of by common order dated 4.9.2001. So far as the present petitioner is concerned, the relevant discussion is contained in paragraphs 17, 18, 19, 20, 21 and 22 of the order of the Tribunal.

7. The Administrative Tribunal perused the order of the disciplinary Tribunal and the materials on record and came to the conclusion that the other officials had abetted the commission of the main crime by the Forest Range Officer. However, while confirming the order of removal from service in respect of the Forest Range Officer, with regard to other employees, the Tribunal directed that the punishment should be modified to one of compulsory retirement. The said order is being impugned by the petitioner in the present writ petition.

8. Learned counsel appearing for the petitioner has strenuously contended that there is no material on record to come to the conclusion that the present petitioner, who was merely a Forest Guard at the relevant time, had aided and abetted the main crime which had been committed by the Forest Range Officer. It is submitted by him that there is no material to indicate that the present petitioner had demanded any illegal gratification nor any money had been paid to him.

9. Learned counsel appearing for the respondents on the other hand, submitted that the disciplinary Tribunal as well as the Administrative Tribunal, applied their minds to the materials on record and came to a particular conclusion and such conclusion should not be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

10. After hearing the learned counsels appearing for the parties and on going through the materials on record, including the order of the Administrative Tribunal as well as the disciplinary Tribunal, we are unable to accept the contention of the learned counsel appearing for the petitioner regarding complicity of the present petitioner in abetting the commission of the delinquency by the Forest Range Officer. The evidence on record clearly indicates that the Forest Range Officer had demanded and accepted the illegal gratification. Even though there is no direct evidence that the present petitioner and other employees had received any part of the money, their role in bringing the villagers to the Range Office and keeping them in custody, cannot be just wished away as mere exercise of official duty.

11. The disciplinary Tribunal had considered and analysed the oral as well as documentary evidence and had come to a particular conclusion which has been reaffirmed by the Administrative Tribunal. The High Court, while exercising jurisdiction under Article 226 against the decision of the Administrative Tribunal constituted under Article 323-A of the Constitution of India, does not sit as an appellate authority over the orders passed by the Administrative Tribunal to reappreciate the evidence. Since the Administrative Tribunal has considered all relevant aspects, having regard to the limited scope of interference with the conclusions of fact, we hardly see any reason to interfere with the conclusions of the disciplinary Tribunal as well as the Administrative Tribunal.

12. Learned counsel appearing for the petitioner then submitted that the gravamen of the charge was against the Forest Range Officer, who had demanded and accepted the bribe, and the role of others, including the present petitioner who were merely subordinate officers, were insignificant, and therefore, the modified punishment imposed by the Tribunal so far as the petitioner is concerned is grossly disproportionate. Learned counsel has also vehemently submitted that as a matter of fact, the very same Tribunal in two other O.As., which were decided at a later stage, had interfered with the punishment of removal from service in respect of two other delinquents, namely N. Mahalingam and R.Theekaraman, involved in the very same incident and has modified the punishment of removal from service to one of stoppage of increment for 3 years with cumulative effect. It is further submitted that the aforesaid order of the Tribunal dated 23.9.2002 in O.A.Nos.5015 and 5041 of 2002 in fact has been accepted by the Government and such persons had been reinstated in service after subsequent modification.

13. A perusal of the enquiry report furnished by the disciplinary Tribunal clearly indicates that the role of the aforesaid two persons was no different from the role played by the petitioner in the present writ. The Administrative Tribunal, while passing the said order has referred to the fact that the Tamil Nadu Public Service Commission had recommended for imposing punishment of stoppage of increment for 3 years with cumulative effect.

14. Undisputedly, the prime culprit in the incident, was the Forest Range Officer. Since the order of the Administrative Tribunal in respect of the similarly situated persons has been implemented by the Government, we feel that, on parity of reasoning, similar punishment should

also have been imposed in respect of the present petitioner.

15. Learned counsel for the State has submitted that those two persons were holding office of inferior rank. However, the very fact that those persons were holding office of inferior rank does not make any difference in the nature of allegations. It is of course true that the culpability of the main culprit, namely Mr.Paramanantham, the Forest Range Officer is different and so far as the delinquency in respect of others being similar, the punishment ultimately imposed should also be similar.

16. Learned counsel for the petitioner has further submitted that the petitioner had filed the Original Application in the year 1997 and he should be given the benefit of past service, including payment of salary for the said period. Learned counsel appearing for the State has opposed the aforesaid submission. It has been pointed out by the learned counsel for the State that as a matter of fact, in O.A.Nos.5 015 and 5041 of 2002, there was no direction for payment of backwages.

17. On going through the aforesaid order, we find that those two O.As were filed in 2002, very soon, after the order of punishment dated 19.7.2002, and as such, non-payment of backwages did not prejudice those persons very much.

18. Having regard to the peculiar facts and circumstances of the case, including the fact that the petitioner had remained out of job for a considerable length of time, we accept the submission of the learned counsel for the petitioner to the effect that backwages for a period of six months may be paid to him and not for the entire period.

19. In the result, the writ petition is allowed in part. The order of punishment of compulsory retirement is modified to one of stoppage of increment for 3 years with cumulative effect as has been done in respect of the delinquents in O.A.Nos.5015 and 5041 of 2002. The petitioner shall be deemed to have been reinstated in service from the date of removal from service and the aforesaid period shall be counted towards the seniority of the petitioner. However, the petitioner shall be paid backwages only for a period of six months. There is no order as to costs.

Index :yes
Internet:yes
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To

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Chennai 600 006

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